

IN THE DISTRICT COURT OF DELAWARE COUNTY  
STATE OF OKLAHOMA

In re Statutory Administrative Warrant  
Allowing Entry to Perform Sampling

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Case No. CV-05-564

**RESPONSE TO MOTION OF SIMMONS FOODS, INC. TO QUASH OR MODIFY  
ADMINISTRATIVE WARRANT AND FOR EXPEDITED HEARING AND ANSWER  
BRIEF IN SUPPORT**

COMES NOW the State of Oklahoma, ex rel. Oklahoma Department of Agriculture, Food, and Forestry ("the Department"), and respectfully submits the following response and answer brief to the Motion of Simmons Foods, Inc. to Quash or Modify Administrative Warrants ("Respondent").

**STATEMENT OF FACTS**

On October 18, 2005 the Department made an application for a statutory administrative warrant allowing entry to premises in order to perform soil and litter sampling and testing at barns and land application sites of a poultry feeding operation known as the Joel J. and Rhonda Reed ("Operators") poultry facility. The application was approved by this Court and the statutory warrant was issued. Before the statutory warrant could be served, the Operators and Respondent filed motions to quash. Respondent's motion recognizes that the Department "has the authority to enter certain poultry growing operations for the purposes of implementing provisions of the Oklahoma Registered Poultry Feeding Operations Act" ("ORPFOA")<sup>1</sup> but expressed concern that the sampling carried out by the Department may not conform to strict biosecurity protocols required by Respondent and implemented by the

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<sup>1</sup> See paragraph 8 of Respondent's motion.

Operators. In addition, Respondent claims a possible outbreak of Infectious Laryngotracheitis (“ILT”) disease in the vicinity of its facility.

### **ARGUMENT AND AUTHORITY**

#### **STATUTORY WARRANT IS AUTHORIZED BY LAW AND BY THE COURT**

In its motion, Respondent admits that the Department is authorized to enter upon the Operators’ property for the purpose of implementing ORPFOA but asserts that the Department’s authority to act under the statutory warrant is limited to emergency situations or to respond to ongoing violations of the law.<sup>2</sup> In fact, the Department’s authority is very broad and not at all limited to those situations, and the Operators gave consent to the Department to inspect, sample and test litter and soil when they registered as operators under ORPFOA. (See 2 O.S. 2001 § 10-9.10(A)(2)(a).

The Oklahoma Constitution in Art. 6 § 31<sup>3</sup> and the Oklahoma Statutes in 2 O.S. § 2-4(A)(7)<sup>4</sup> state that the State Board of Agriculture and the Department have jurisdiction over all matters affecting animal industry, animal health, and animal quarantine, including jurisdiction over poultry and poultry litter.<sup>5</sup> The Department has general authority under 2 O.S. § 2-14(A) to enter any premises “for the purpose of implementing the Oklahoma Agricultural Code and rules promulgated thereof.” The Department also has the authority

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<sup>2</sup> See paragraph 7 of Respondent’s motion.

<sup>3</sup> Article 6 § 31 of the Oklahoma Constitution states: “Said Board [of Agriculture] shall be maintained as a part of the State government, and shall have jurisdiction over all matters affecting animal industry and animal quarantine regulation.”

<sup>4</sup> 2 O.S. § 2-4(A)(7) states: “The State Board of Agriculture shall have the power to: A.7 Have jurisdiction over all matters affecting animal industry, animal health, and animal quarantine.”

<sup>5</sup> 2 O.S. § 1-1 et seq. describes the Oklahoma Agricultural Code, and the powers of the State Board of Agriculture and the Department are shown in 2 O.S. § 2-4 et seq.

under 2 O.S. § 2-14(B) "to carry out all necessary and proper actions to determine compliance with the Oklahoma Agricultural Code including, but not limited to inspection and collecting and submitting samples for analysis."<sup>6</sup>

The Department is also authorized to enter the premises of a poultry feeding operation to determine whether there are any violations of ORPFOA<sup>7</sup> and has the authority under the Oklahoma Poultry Waste Applicators Certification Act ("OPWACA") to take samples of poultry waste and soil at application sites, whether or not they are associated with a poultry feeding operation, in order to determine their concentration.<sup>8</sup> When the Operators refused to allow the Department to come onto their farm and obtain samples of poultry litter and soil according to the Department's sampling protocol, the Department was authorized to obtain the statutory warrants from the Court to enforce its right of access and inspection. (See 2 O.S. § 2-14(C) in footnote 6). Furthermore, 27A O.S. § 1-3-101(D)(1)(a) & (h) (2005

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<sup>6</sup> 2 O.S. 2001 § 2-14 states:

A. The State Board of Agriculture or its authorized agents shall have the authority to enter any premises or mode of transportation during reasonable hours for the purpose of implementing the Oklahoma Agricultural Code or rules promulgated pursuant thereto.

B. The Board or its authorized agents shall have the authority to carry out all necessary and proper actions to determine compliance with the Oklahoma Agricultural Code including, but not limited to, conducting investigations, opening any bundle, package, or container of agricultural products, examining and making photocopies of records or documents, examining devices, and collecting and submitting samples for analysis.

C. If any person refuses, denies or interferes with any right of access, the Board shall have the right to apply to and obtain from a district court an administrative or other warrant as necessary to enforce the right of access and inspection.

<sup>7</sup> 2 O.S. 2001 § 9-10(A)(1)(a) states: "The State Board of Agriculture or its authorized agents are empowered to enter upon the premises of any poultry feeding operation for the purpose of investigating complaints as to the operation or to determine whether there are any violations of the Oklahoma Registered Poultry Feeding Operations Act"

<sup>8</sup> 2 O.S. § 2001 10-9.16 et. seq. describes the Oklahoma Poultry Waste Applicators Certification Act. 2 O.S. 2001 § 9-20 (A) states "The Department may take samples of poultry waste and soil at application sites in order to determine their concentration. The work of each applicator may be inspected at the application site of each

Supp.)<sup>9</sup> empowers the Department to enforce Oklahoma's water quality standards with respect to point source discharges and non-point source runoff from animal waste.<sup>10</sup> Finally, the Operators' registration of their poultry feeding operation constitutes consent for entry upon the premises by the State Board of Agriculture or its agents.<sup>11</sup>

### PROPER STANDARD OF REVIEW FOR ADMINISTRATIVE WARRANTS

The Department's statutory warrant to obtain soil and litter sampling and testing was properly submitted to the Court accompanied by an affidavit attesting to the facts in the application. The Department's intent "to enter the premises in order to perform soil and litter sampling and testing at the barns and land application sites"<sup>12</sup> is an inspection done as "part of the normal regulatory duties of the Department as part of implementing the Oklahoma Registered Poultry Feeding Operations Act and the Oklahoma Poultry Waste Applicators

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applicator, to determine whether or not the work is performed according to the provisions of the Oklahoma Poultry Waste Applicators Certification Act."

<sup>9</sup> 27A O.S. § 1-3-101(D)(1)(h) (2005 Supp.) states that "The Oklahoma Department of Agriculture, Food, and Forestry shall have the following jurisdictional areas of environmental responsibility except as provided in paragraph 2 of this subsection: [a] point source discharges and nonpoint source runoff from agricultural crop production, agricultural services, livestock production, silviculture, feed yards, livestock markets and animal waste....(h) utilization and enforcement of Oklahoma water quality standards and implementation documents."

<sup>10</sup> Although Respondent stated that the Department has not promulgated any rules related to enforcement of Oklahoma water quality standards, the Department promulgated rules in OAC 35:45-1-1 et seq. specifying how the Department utilizes and enforces the Oklahoma's water quality standards for surface water and groundwater. Related statutes also grant authority to the Department to protect the waters of the state from pollution resulting from poultry operations. For example, 2 O.S. Section 10-9.7(B)(4) states that poultry waste handling, treatment, management and removal shall: (a) not create an environmental or public health hazard; (b) not result in contamination of waters of the state; (c) conform to such other handling, treatment and management and removal requirements deemed necessary by the State Department of Agriculture to implement the Oklahoma Registered Poultry Feeding Operations Act. 2 O.S. Section 10-9.7(C) (6)(c) also prohibits discharges and runoff from poultry operations. OAC 35:45-1-7(d)(1) shows that water quality standards apply to poultry operations and describes the Department's practice to analyze soil and other data to determine that an operation is in compliance

<sup>11</sup> 2 O.S. 2001 § 10-9.10(A)(2)(a) states "Registration of a poultry feeding operation pursuant to the Oklahoma Registered Poultry Feeding Operations Act shall be deemed to constitute consent for entry upon the premises of such operation by the Board or its agents for the purpose of implementing the provisions of this subsection."

<sup>12</sup> See paragraph 1 of the application.

Act.”<sup>13</sup>

The warrant was issued *ex parte* by the Court and is a necessary tool to be used by agencies so as to ensure that reasonable regulatory purposes are accomplished. For this end, statutory administrative warrants shall be issued *ex parte* and executed without delay and without prior notice. *Donovan v. Hackney*, 769 F.2d 650 at 653 (U.S. Court of Appeals, 10<sup>th</sup> Circuit 1985). Although courts in other jurisdictions struggle to determine the satisfactory method to challenge the validity of an administrative warrant and the Oklahoma Supreme Court has not ruled on this issue, the District Court in the Western District of Oklahoma considered the question in *Hackney* and reasoned that one should challenge a warrant after complying with the warrant and not by refusing to allow an agency to complete an inspection. *Donovan v. Hackney*, 583 F.Supp. 773, (U.S. District Court, W.D. of Oklahoma 1984). In *Hackney*, an employer refused to allow an OSHA inspection after being served with a search warrant and filed a motion to quash the warrant. The District Court upheld the warrant and ruled that a “challenge to the validity of an OSHA search warrant must be raised after inspection has occurred and could not be raised by counterclaim in [a] contempt proceeding.” (*Id.* citing *Hackney*) Upon review, the 10<sup>th</sup> Circuit Court upheld in part the ruling of the District Court, stating: “By choosing to refuse to comply with Occupational Safety and Health Administration inspection warrant and seeking motion to quash, employer ran risk of being held in contempt and being assessed costs.” (*Id.* citing *Hackney*). The 10<sup>th</sup> Circuit Court made reference to an opinion of the 3<sup>rd</sup> Circuit Court in *Babcock and Wilcox v. Marshall*, 610 F.2d 1128 (3<sup>rd</sup> Cir. 1979), which states:

(1) [a] plant owner's motion to quash warrant, which motion was made after

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<sup>13</sup> See paragraph 2 of the application.

warrant was fully executed, was appealable, but was moot; (2) once Administration inspection has been conducted, plant owner must exhaust its remedies in administrative tribunal before it may seek relief in federal courts raising constitutional challenges to such inspection; and (3) direct review of issuance of civil warrant may be obtained before Administration inspection only by resisting entry, moving to quash warrant, risking contempt, and, if necessary, acting expeditiously to appeal.

In this present case, Respondent filed a motion to quash or modify as a means to challenge the validity of the Department's administrative warrants. The Department acknowledges Respondent's right to a hearing, but asserts that Respondent has not provided this Court with any persuasive evidence that the warrant is invalid. The grounds to review an administrative warrant have been generally limited to a review of the warrant and its application only:

Upon a proper showing by a party challenging an administrative warrant, the court may hold an evidentiary hearing on the truthfulness of the facts presented to the magistrate; this hearing is for [the] limited purpose of allowing the challenging party to prove by a preponderance of the evidence that the warrant application contains false statements, or that material omissions were made deliberately or with reckless disregard for the truth" (citing *Donavan v. Hackney, Inc.*, 583 F. Supp. 773).

*American Jurisprudence Inspection*, 42 Am Jur.2d Inspection Laws § 20 (2005).

Furthermore, *American Jurisprudence Second* amplifies this principle in its practice guide as follows:

The propriety of the issuance of an administrative warrant is reviewed by what was presented to the issuing court, not what is known after the hearing upon it; (citing *Marshall v. Horn Seed Co., Inc.*, 509 F. Supp. 1) the traditional requirement that the review of a warrant be confined to the "four corners" of the application is applicable to the review of administrative inspection warrants." (citing *Donavan v. Hackney, Inc.*, 583 F. Supp.773).

*American Jurisprudence Inspection*, 42 Am Jur.2d Inspection Laws § 20 (Practice Guide 2005)

Respondent must prove by a preponderance of the evidence that the statutory warrant, application, or the affidavit contains false statements or that material omissions were made deliberately or with reckless disregard for the truth. The District Court in *Hackney* referred to the United States Supreme Court decision in *Franks v. Delaware*, 438 U.S. 154, 98 S. Ct. 2674, stating:

[T]he Supreme Court reaffirmed the position that review of a search warrant must be limited to examination of the materials presented to the magistrate, in the absence of intentional or grossly negligent false statements made to the issuing magistrate. Although *Franks* involved warrant review in a criminal case, it is generally accepted that the same reasoning applies to administrative inspection warrants. See, e.g., *West-Point-Pepperill, Inc. v. Donovan*, 689 F.2d 950, 959 (11<sup>th</sup> Cir. 1982); *Marshall v. Horn Seed Co., Inc.*, 647 F.2d 96, 100 (10<sup>th</sup> Cir. 1981). Thus, the traditional requirement that review of the warrant be confined to the "four corners" of the application is applicable to review of administrative inspection warrants.

In this present case, Respondent has not alleged or provided any evidence that the Department's warrant, application or affidavit contain any intentional or grossly negligent false statements, or contain any material omissions that were made deliberately or with reckless disregard for the truth, so Respondent's motion should not stand.

Respondent is also limited in its challenge to the information contained in the statutory warrant, the application, and the related affidavit and cannot raise any extraneous issues or claims. (*Id.*, citing *Hackney*). In ruling on the validity of an administrative warrant, a reviewing court shall only consider the information provided to the issuing judge (See *Marshall v. Horn Seed Co., Inc.* 647 F.2d 96, 104 (10<sup>th</sup> Cir. 1981)). The reviewing court shall be limited to the four corners of the warrant application, affidavit and warrant. (*Id.*, citing *Marshall*); *In re Hackney, Inc.*, and *Wayne Schwedland*, Not Reported in F.Supp., 1982 WL 119251 (W.D.Okla.). Respondent cannot challenge the statutory warrants by unsubstantiated



allegations that are extraneous to the information in the warrant, application and affidavit. Respondent's questions and concerns about ILT disease and the Department's biosecurity protocols are all outside of the "four corners" of the warrant, application and affidavit and cannot be provided as evidence to challenge the validity of the warrant.

In its motion, Respondent makes an unsubstantiated claim that the Department's "true purposes under this warrant are not justifiable under or consistent with the provisions of the Act" while acknowledging that "[the Department] has authority to enter certain poultry growing operations for the purpose of implementing the provisions of the Act."<sup>14</sup> The Department's purpose for the warrant, to perform soil and litter sampling and testing, is clearly described in the application.<sup>15</sup> Respondent has not provided any evidence of any other purpose and should not be allowed to go outside the information in the warrant, application and affidavit to fabricate stories to challenge the warrant.

Respondent appears to claim that the Department can only enter a poultry operation under ORPFOA in response to an on-going violation of the law, implying that the Department must have probable cause to obtain a statutory warrant, as is the case for a criminal search warrant. The standard for obtaining an administrative warrant, however, is not that strict. An administrative warrant is justified simply when the purpose is to fulfill a reasonable legislative or administrative standard, as when conducting an inspection. *Marshall v. Barlow's, Inc.*, 436 U.S. 307, 98 S.Ct. 1816. Probable cause of a particular or certain violation is not required or necessary for an administrative warrant to be issued.

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<sup>14</sup> See paragraph 7 of Respondent's motion.

<sup>15</sup> See paragraph 1 of the application.



As shown in the affidavit, the Department had a reasonable basis for applying for the statutory warrant. In 2005, the Department developed a plan to sample and test poultry litter and soil from poultry operations throughout the Illinois River watershed. The Department's criteria for selecting poultry operations for sampling and testing was based upon their inclusion in the watershed and whether they owned multiple fields upon which litter had been applied. On May 3, 2005, the Department invited poultry operators in the watershed to a meeting to discuss the program and ask for their voluntary participation. On October 18, 2005, the Department notified the Operators that the Department would begin to schedule sampling and testing, and the Department selected the Operators' farm as one of the poultry operations in Delaware County that met the Department's sampling and testing criteria. The administrative warrant was then obtained when the Operators refused to allow the Department to carry out its sampling and testing program.

The Department is the regulatory and enforcement authority for agriculture in the State of Oklahoma and may use all modes of inquiry and investigation traditionally employed or useful to execute the authority granted to it by the legislature, including the sampling and testing protocols adapted for the Operators property. *Dow Chemical Company v. United States*, 476 U.S. 227, 106 S. Ct. 1819. In *Dow*, the EPA was denied right of entry to inspect a chemical plant, and completed its inspection by taking aerial photographs of the plant. Dow brought suit in Federal District Court alleging that the EPA's inspection violated the Fourth Amendment and was beyond its statutory investigative authority. Dow claimed that the EPA's inspection and photograph's violated their privacy right with respect to their

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intellectual property and trade secrets. The Supreme Court upheld the authority of the EPA, stating:

Congress has vested in EPA certain investigatory and enforcement authority, without spelling out precisely how this authority was to be exercised in all the myriad circumstances that might arise in monitoring matters relating to clean air and water standards. When Congress invests an agency with enforcement and investigatory authority, it is not necessary to identify explicitly each and every technique that may be used in the course of executing the statutory mission. [...]Regulatory or enforcement authority generally carries with it all the modes of inquiry and investigation traditionally employed or useful to execute the authority granted. Environmental standards such as clean air and clean water cannot be enforced only in libraries and laboratories, helpful as those institutions may be.

In actions analogous to the EPA in *Dow*, the Department is authorized to employ all the modes of inquiry and investigation traditionally employed or useful to execute its authority, including sampling and biosecurity protocols proposed for sampling and testing on the Operators' farm.

#### **THE DEPARTMENT'S BIOSECURITY PROTOCOLS ARE AUTHORITATIVE**

Respondent questions whether the Department's biosecurity protocols are consistent with the biosecurity measures it alleges are required for access to flocks on the Operators farm. Respondent's questions related to biosecurity and ILT disease, however, are not relevant to these proceedings, being outside the "four corners" of the warrant, application and affidavit. Respondent's questions and concerns, although irrelevant, must not be allowed to interfere with the authority of the State Veterinarian and the Department. The State Veterinarian is the recognized authority on animal diseases in Oklahoma. The Department is also the official agency of the state responsible for the control of animal diseases and is authorized to take action to prevent the spread of animal diseases and related threats to

agriculture in general and the poultry industry in this particular case.<sup>16</sup> The Department is thus the authority on poultry diseases (including the ILT disease)<sup>17</sup> and the risks posed by disease to poultry operations. The State Veterinarian, and the Department's veterinarians, program officers and inspectors are all trained in proper biosecurity protocols and experienced in following correct and proper procedures while inspecting, sampling and testing at poultry farms and in poultry barns. Department inspectors and veterinarians make hundreds of inspections of poultry operations in Oklahoma every year. Many of these inspections occur during emergency situations arising from poultry diseases. The State Veterinarian and Department are thus the authority on biosecurity protocols in the State of Oklahoma.

In this present case, the Department has developed specific biosecurity protocols for the sampling and testing program that are equivalent to Respondent's protocols and sufficient to allow the Operators' farm to be sampled even under conditions where disease is present. ILT disease has not been found on the Operators' farm or on any other farm where statutory warrants were issued by this Court. The Department addressed Respondent's concerns in the affidavit and in discussions with Respondent's counsel, and has assured Respondent that the

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<sup>16</sup>See Art. 6 § 31 of the Oklahoma Constitution. See also 2 O.S. § 6-2, which states that "The State Board of Agriculture shall be the official livestock and poultry disease control agency of the State of Oklahoma. The Board shall have authority to promulgate and enforce rules governing the handling, sale, and use of vaccines, antigens, and other biological products used in connection with livestock or poultry. " As the official control agency of the state, the Department has the authority to develop and implement appropriate biosecurity protocols for sampling and the authority to determine if and when an ILT outbreak precludes sampling and testing on Respondents farms.

<sup>17</sup> ILT disease, although a serious concern, is not a zoonotic disease or a threat to human health. The disease exists in two strains, the vaccine strain that arises as a low-grade form of infection caused by vaccination for the disease and the field strain that is virulent and a threat to poultry mortality. At this time, the Department believes as a result of preliminary test results that all confirmed cases of ILT in Oklahoma are vaccine strain and not the more serious field strain of ILT. The Department is conducting further tests to confirm this belief,

Department's inspectors will follow appropriate biosecurity protocols while sampling and testing at the Operators' facility.<sup>18</sup>

### CONCLUSION

The warrant at issue was properly obtained and the sampling and testing permitted by the warrant is within the Department's regulatory authority. Respondent has failed to show that the warrant application contains false statements or that material omissions were made deliberately or with reckless disregard for the truth. The State Veterinarian and the Department are the lawful authority on ILT disease and biosecurity protocols for the State of Oklahoma, and have assessed the threat posed by ILT disease to poultry operations in Delaware County and determined that the Operators' farm can be safely sampled and tested according to the statutory warrant issued by this Court.

WHEREFORE, the Department respectfully requests that the Court deny the Respondent's motion to quash or modify administrative warrant, and allow the Department to proceed with the inspection, testing and sampling ordered by the Court in the statutory administrative warrants allowing entry to perform sampling.

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but has determined at this time that poultry operations in Delaware County can be safely inspected, sampled, and tested according to the statutory warrants using the biosecurity protocols developed by the Department.

<sup>18</sup> See the biosecurity protocols and related affidavit from the State Veterinarian, Dr. Becky Brewer-Walker, shown herein in Exhibit "A"

Respectfully submitted,



David D. Leavitt, OBA # 15800  
James Woodruff, OBA # 11579  
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Attorneys for Petitioner

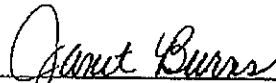
CERTIFICATE OF SERVICE

I hereby certify that on this 12<sup>th</sup> day of November, 2005, a true and correct copy of the above and foregoing was mailed, postage prepaid, to:

Stephen L. Jantzen, Esq.  
Patrick M. Ryan, Esq.  
Paula M. Buchwald, Esq.  
Ryan, Whaley & Coldiron, P.C.  
119 N. Robinson, Suite 900  
Oklahoma City, OK 73102

Stratton Taylor, Esq.  
Mark Antinoro, Esq.  
Clint Russell, Esq.  
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Michael Graves, Esq.  
Hall, Estill, Hardwick, Gable, Golden &  
Nelson, P.C.  
320 S. Boston Ave., Suite 400  
Tulsa, OK 74103



JANET BURNS

**Exhibit "A"**

**IN THE DISTRICT COURT OF DELAWARE COUNTY  
STATE OF OKLAHOMA**

**In re Statutory Administrative Warrant  
Allowing Entry to Perform Sampling**

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**AFFIDAVIT IN SUPPORT OF APPLICATION  
FOR STATUTORY ADMINISTRATIVE WARRANT  
ALLOWING ENTRY FOR INSPECTION**

I, Becky Brewer-Walker, D.V.M., being duly sworn upon my oath, do depose and say:

1. I am the State Veterinarian and the Director of the Animal Industry Services Division, of the Oklahoma Department of Agriculture, Food, and Forestry (Department) and a duly authorized representative of the State Board of Agriculture for the purpose of carrying out the Oklahoma Agricultural Code (Code).

2. The State Veterinarian is the recognized authority on animal diseases in Oklahoma regulated by the Oklahoma Agricultural Code. The Department is also the official agency of the state responsible for the control of said animal diseases and is authorized to take action to prevent the spread of said animal diseases and related threats to agriculture in general and the poultry industry in this particular case.

3. The State Veterinarian is the authority on poultry diseases regulated by the Oklahoma Agricultural Code, including Infectious Laryngotracheitis disease ("ILT"), and the risks posed by said diseases to poultry operations.

4. The State Veterinarian is the authority on animal health biosecurity protocols related to the Oklahoma Agricultural Code in the State of Oklahoma.

The statements herein are made upon personal knowledge.

5. The State Veterinarian, and the Department's veterinarians, program officers and inspectors are trained in appropriate proper biosecurity protocols and are experienced in following correct and proper procedures while inspecting, sampling and testing at poultry farms and in poultry barns.

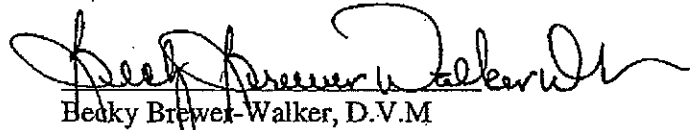
6. Department inspectors and veterinarians perform hundreds of inspections of poultry operations in Oklahoma every year. Many of these inspections occur during emergency situations arising from poultry diseases.

7. The Department has developed specific biosecurity protocols that are equivalent to biosecurity programs developed by Tyson Chicken, Inc., George's, Inc., Cobb-Vandress, Inc. and Simmons Foods, Inc. The Department's protocols and guidelines, attached herein, are sufficient to allow poultry operations to be safely sampled even under conditions where disease is present.

8. ILT disease has not been found on the poultry farms owned where statutory warrants were issued by this Court.

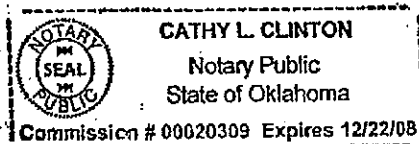
9. ILT disease, although a serious concern, is not a zoonotic disease or a threat to human health. The disease exists in two strains, the vaccine strain that arises as a low-grade form of infection caused by vaccine usage and the field strain that is virulent and is frequently accompanied by increased poultry mortality. Field strain ILT has an adverse affect upon the state's poultry export market. At this time, the Department believes as a result of preliminary test results that all confirmed cases of ILT in Oklahoma are vaccine strain and not the more serious field strain. The Department is conducting further tests to confirm this belief. All ILT outbreaks in Oklahoma in recent years have been confirmed as caused by the vaccine strain of ILT.


10. The Department has determined at this time that poultry operations in Delaware County can be safely inspected, sampled, and tested according to the statutory warrants using the biosecurity protocols developed by the Department.



Becky Brewer-Walker, D.V.M.  
State Veterinarian and Director  
State Board of Agriculture  
Oklahoma Department of Agriculture,  
Food, and Forestry

Before me, an authorized agent of the Board, in and for said County and State, on this 3<sup>rd</sup> day of November, 2005, personally appeared Becky Brewer-Walker, D.V.M, and stated that the facts set forth in this Affidavit are true and correct to the best of her knowledge and belief.



  
District Judge or Notary Public



## EXHIBIT "A"

### POULTRY PREMISE ENTRY BIOSECURITY PROTOCOLS FOR REGULATORY PERSONNEL

The steps you take entering a premise makes a difference and can have a significant impact on the well-being of the operation. It is important to follow proper Biosecurity measures because poultry, animal and plant diseases are spread in numerous ways between farms and ranches including through human contact and vehicle movement.

- 1) Follow any Biosecurity Guidelines established by the facility you are visiting.
- 2) Prepare your supplies, clothing and vehicle before your visit.
  - Disposable coveralls (TYVEK).
  - Disposable boot covers or easily disinfected boots.
  - Task suitable disposable gloves.
  - Long handled scrub brush to clean boots if you use them.
  - Suitable disinfectant (10% Bleach, Vircon) mixed as directed.
  - Bucket or container to mix disinfectant solutions.
  - Water for mixing if needed
  - Hand held sprayers for tire cleaning if needed.
  - Trash bags and ties.
- 3) Keep "dirty" used suits, boot covers, Etc, separate from clean supplies in your vehicle (double trash bagged).
- 4) **DO NOT DRIVE ONTO POULTRY PREMISE IF AT ALL POSSIBLE.**
- 5) Park at gate or facility entrance if at all possible.
- 6) Wear TYVEK COVERALLS when on premise.
- 7) Wear easily disinfected boots or preferably disposable boot covers.  
**REMEMBER ALL MUD AND ORGANIC MATERIAL MUST BE CLEANED FROM TIRES AND BOOTS FOR DISINFECTANTS TO WORK.**
- 8) Put your protective clothing on before you enter the premise.
- 9) Use suitable disposable gloves.
- 10) Place all contaminated TYVEK, boot covers and gloves in a trash bag as you exit the premise, seal the bags and take it with you for proper disposal later.
- 11) If you have driven onto the premise you must clean all mud and organic material from your vehicle and its tires, then properly spray with disinfectant prior to going onto public roadway.
- 12) Properly contain your samples so as to prevent contamination of other farms.

CERTIFICATE OF SERVICE

I hereby certify that on this 8<sup>th</sup> day of November, 2005, a true and correct copy of the above and foregoing was mailed, postage prepaid, to:

John Elrod, Esq.  
Vicki Bronson, Esq.  
Terri Dill Chadick, Esq.  
Conner & Winters, LLP  
100 W. Center Street, Suite 200  
Fayetteville, Arkansas 72710

  
\_\_\_\_\_  
JANET BURNS

IN THE DISTRICT COURT OF DELAWARE COUNTY  
STATE OF OKLAHOMA

IN RE: STATUTORY ADMINISTRATIVE  
WARRANT ALLOWING ENTRY TO  
PERFORM SAMPLING

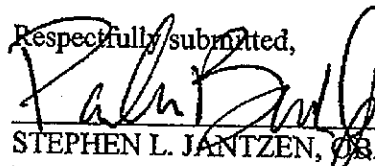
Case No. CV-05-565

ENTRY OF APPEARANCE

Pursuant to 12 O.S. §2005.2(A), the attorneys listed below hereby enter their appearances on  
behalf of Tyson Chicken, Inc. in the above-captioned matter:

Stephen L. Jantzen, OBA # 16247  
Patrick M. Ryan, OBA # 7864  
Paula M. Buchwald, OBA # 20464  
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Respectfully submitted,



STEPHEN L. JANTZEN, OBA # 16247  
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[pbuchwald@ryanwhaley.com](mailto:pbuchwald@ryanwhaley.com)  
ATTORNEYS FOR TYSON CHICKEN, INC.

RECEIVED

OCT 24 2005

LEGAL SERVICES  
STATE DEPT. OF AGRICULTURE

**CERTIFICATE OF SERVICE**

I hereby certify that on this 21st day of October, 2005, a true and correct copy of the above and foregoing was mailed, postage prepaid, to:

**David Leavitt, Esq.  
Office of General Counsel  
Oklahoma Department of  
Agriculture, Food and Forestry  
2800 N. Lincoln Blvd.  
Oklahoma City, OK 73105-4298**

**Michael Graves, Esq.  
Hall, Estill, Hardwick, Gable, Golden &  
Nelson, P.C.  
320 S. Boston Ave., Suite 400  
Tulsa, OK 74103**

**Stratton Taylor, Esq.  
Mark Antinoro, Esq.  
Clint Russell, Esq.  
POB 309  
Claremore, OK 74018**

  
\_\_\_\_\_  
PAULA M. BUCHWALD

IN THE DISTRICT COURT OF DELAWARE COUNTY  
STATE OF OKLAHOMA

IN RE: STATUTORY ADMINISTRATIVE  
WARRANT ALLOWING ENTRY TO  
PERFORM SAMPLING

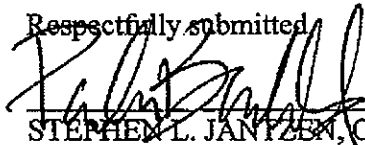
Case No. CV-05-563

ENTRY OF APPEARANCE

Pursuant to 12 O.S. §2005.2(A), the attorneys listed below hereby enter their appearances on  
behalf of Cobb-Vantress, Inc. in the above-captioned matter:

Stephen L. Jantzen, OBA # 16247  
Patrick M. Ryan, OBA # 7864  
Paula M. Buchwald, OBA # 20464  
RYAN, WHALEY & COLDIRON  
119 N. ROBINSON  
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Respectfully submitted,



STEPHEN L. JANTZEN, OBA # 16247  
PATRICK M. RYAN, OBA # 7864  
PAULA M. BUCHWALD, OBA #20464  
RYAN, WHALEY & COLDIRON, P.C.  
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ATTORNEYS FOR COBB-VANTRESS, INC.

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OCT 24 2005

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STATE DEPT. OF AGRICULTURE

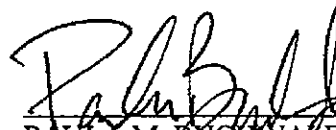
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**Oklahoma Department of**  
**Agriculture, Food and Forestry**  
**2800 N. Lincoln Blvd.**  
**Oklahoma City, OK 73105-4298**

**Michael Graves, Esq.**  
**Hall, Estill, Hardwick, Gable, Golden &**  
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**Mark Antinoro, Esq.**  
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**POB 309**  
**Claremore, OK 74018**

  
\_\_\_\_\_  
PAULA M. BUCHWALD

**FILED**

**IN THE DISTRICT COURT OF DELAWARE COUNTY  
STATE OF OKLAHOMA**

OCT 21 2005

CAROLINE M. WEAVER  
DELAWARE CO. COURT CLERK

*In re* Statutory Administrative Warrant  
Allowing Entry to Perform Sampling

Case No. CV-05-565

**ENTRY OF APPEARANCE**

COME NOW, Stratton Taylor, Mark Antinoro and Clint Russell of the law firm of Taylor, Burrage, Foster, Mallett, Downs & Ramsey, Claremore, Oklahoma, and hereby enters their appearances as counsel for Tyson Chicken, Inc., Cobb-Vantress, Inc. and George's, Inc.

Respectfully submitted,

Taylor, Burrage, Foster, Mallett, Downs & Ramsey  
A Professional Corporation

*Clint Russell*

Stratton Taylor, OBA #10142  
Mark Antinoro, OBA #17839  
Clint Russell, OBA #19209  
400 West Fourth Street  
P.O. Box 309  
Claremore, OK 74018  
918/343-4100  
918/343-4900 facsimile

*Attorneys for Tyson Chicken, Inc., Cobb-Vantress, Inc.  
and George's, Inc.*

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OCT 24 2005

LEGAL SERVICES  
STATE DEPT. OF AGRICULTURE



**CERTIFICATE OF MAILING**

This is to certify that a true and correct copy of the above and foregoing document was on the 21<sup>st</sup> day of October, 2005, mailed by U.S. Mail to the following:

Michael Graves  
Hall, Estill, Hardwick, Gable, Golden &  
Nelson, P.C.  
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Tulsa, OK 74103

Attorney for \_\_\_\_\_

Teena G. Gunter  
Deputy General Counsel  
Oklahoma Department of Agriculture, Food  
& Forestry  
P.O. Box 528804  
Oklahoma City, OK 73152-8804

*Attorney for State of Oklahoma Department  
of Agriculture, Food & Forestry*

Clint Russell  
Clint Russell